

SENATE BILL 3988  
By Herron

AN ACT to amend Tennessee Code Annotated, Title 56,  
Chapter 35, relative to title insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-35-119, is amended by deleting such section in its entirety and by substituting instead the following:

**§ 56-35-119.**

(a) Any applicant for a policy of title insurance, or any person, firm or corporation, on behalf of any such applicant, or any other person, firm or corporation shall not:

(1) Request, receive or obtain from a title insurance agent or a title insurance company, any commission, discount, rebate, special favor, advantage or inducement, or to engage or participate in any collusion with respect thereto; or

(2) Engage in business as a title insurance agent in this state, nor accept or hold a certificate of agency for the chief and primary purpose of securing some special advantage, rebates, commissions or concessions on title insurance written for such person, or some person, firm, corporation or lending institution in which such person is interested, or with which such person is connected or associated.

(b) A title insurance company or title insurance agent shall not:

(1) Engage in the business of guaranteeing the payment of the principal or the interest of bonds, notes, or other obligations;

(2) Transact, underwrite, or issue any kind of insurance other than title insurance;

(3) Give or receive or attempt to give or receive remuneration in any form pursuant to any agreement or understanding, oral or otherwise, for the referral of title insurance business;

(4) Give, grant or rebate any part of a premium for title insurance to any lender, mortgage broker or real estate agent or broker or real estate builder or developer; or

(5) Give or receive or attempt to give or receive any portion or percentage of any charge made or received in connection with the business of title insurance if such charge is not for services actually rendered. For purposes of this section, "Services actually rendered" shall include but not be limited to a reasonable examination of a title, including instruments of record, and a determination of insurability of such title in accordance with sound underwriting practices. "Services actually rendered" shall not include the mere referral of title insurance business.

(c) Nothing in this section, or in any other provision of law governing the insurance industry, shall be construed to prohibit:

(1) The distribution of profits or dividends to the owner or owners or shareholders of a title insurance company, agency, or agent; provided, that such distribution is made in the ordinary course of business and in accordance with sound accounting principles.

(2) Compensation by a title insurance company of an attorney who is licensed to practice in Tennessee for services actually rendered in connection with a real estate transaction, regardless of whether such attorney represents a client in such real estate transaction. Compensation of the attorney for services actually rendered shall not include the payment of an hourly fee paid by the client

combined with a payment from the title insurance company for the same service; except that before issuing any title insurance commitment, such attorney shall disclose to any party represented by such attorney in the transaction for which the commitment shall be issued that such attorney may be compensated for the issuance of such title insurance commitment.

(3) Payment to any person of a bona fide salary or compensation for payment of goods and facilities actually furnished or for services actually rendered.

(d) Any party to a transaction which is subject to this section shall have a right of action for any actual loss or damage resulting from any violation of this section.

(e) Nothing in this chapter shall be construed to make unlawful the distribution of profits or dividends to the owner or owners or shareholders of a title insurance company, agency, or agent; provided, that such distribution is made in the ordinary course of business and in accordance with sound accounting principles.

SECTION 2. This act shall take effect July 1, 2006, the public welfare requiring it.